IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 211 of 2007.

Reserved on: 10.10.2007.

Decided on: 12.11.2007.

Mool Raj. … … Petitioner.

Versus

Financial Commissioner (Appeals) and Others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner:	**Mr. K.D. Sood and Mr. Rajnish K. Lal, Advocates.**
For Respondents No.1 to 3:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For Respondents No.4 & 5:	**Mr. Rajnish Maniktala, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the respondents No.4 and 5 had submitted application for correction of the revenue record before the Sub-Divisional Collector, Hamirpur. The Sub-Divisional Collector, Hamirpur allowed the application on 8.6.1999 and the Karukans of the land

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Whether reporters of local papers may be allowed to see the judgment? No.

purchased by the petitioners were changed. Feeling aggrieved by the order dated 8.6.1999, the petitioner preferred an appeal before the Divisional Commissioner, Mandi Division. The appeal was allowed by the Deputy Commissioner exercising the powers of Commissioner on 16.4.2001 and the matter was remanded back to the Sub-Divisional Collector. The Sub-Divisional Collector, Hamirpur vide order dated 31.5.2002 again allowed the application preferred by the respondents No.4 and 5 and ordered the corrections of Karukans in the revenue record. The petitioner filed an appeal before the Deputy Commissioner, Hamirpur exercising the powers of the Commissioner. The appeal was dismissed by the Deputy Commissioner on 3.2.2003. The petitioner thereafter filed a revision against the said order before the Financial Commissioner (Appeals). The appeal was dismissed by the Financial Commissioner (Appeals) on 24.7.2006. It will be apt to mention at this stage that the mutation No.1768 was attested in favour of respondents No.4 and 5 on 9.7.1999.

Mr. Kapil Dev Sood had strenuously argued that the orders dated 31.5.2002, 3.2.2003and 24.7.2006 passed by the Sub-Divisional Collector, Hamirpur, Deputy Commissioner and the Financial Commissioner (Appeals) are not sustainable in the eyes of law. He had supported the order passed by the Deputy Commissioner, dated 16.4.2001. The learned Advocate General had supported the orders passed by the Sub Divisional Collector, Hamirpur, dated 31.5.2002, order passed by the Deputy Commissioner, dated 3.2.2003 as well as the order passed by the

Financial Commissioner (Appeals), dated 24.7.2006. Mr. Rajnish Maniktala appearing on behalf of respondents No.4 and 5 had also supported the orders passed by the Sub-Divisional Collector, dated 31.5.2002, order passed by the Deputy Commissioner, dated 3.2.2003 and the order passed by the Financial Commissioner (Appeals) on 24.7.2006.

I have heard the learned counsel for the parties and perused the record.

The Sub-Divisional Collector, Hamirpur on the basis of the demarcation carried out by the Tehsildar, Hamirpur as Local Commissioner had ordered that the dimension of Khasra Nos.1357/722, 1358/722, 1359/722, 1360/722 and 1361/722 be corrected in the revenue record through mutation. The report of the Tehsildar, dated 21.6.1990 has been placed on record. It is evident from the statement of the petitioner made before the Tehsildar that he had accepted the demarcation carried out by the Tehsildar. The Deputy Commissioner vide order dated 16.4.2001 had set aside the order passed by the Sub-Divisional Collector, dated 8.6.1999 primarily on the basis of tatima. The Sub-Divisional Collector, Hamirpur again vide order dated 31.5.2002 after closely scrutinizing the tatimas came to the conclusion that the correction proposed by the Assistant Collector Ist Grade was correct. The Deputy Commissioner has not interfered with the order passed by the Sub-Divisional Collector, dated 31.5.2002. He had come to the conclusion on the basis of the record that the petitioner had purchased only one kanal of land from the original owner and the

area was worked out wrongly, which was corrected by the Sub-Divisional Collector, Hamirpur vide order dated 31.5.2002. The Financial Commissioner (Appeals) after adopting the correct process of reasoning came to the conclusion that though the dimension of the plot had been changed, the area with the petitioner remained one kanal. Consequently, the Financial Commissioner (Appeals) had declined to interfere in the revision preferred by the petitioner against the order dated 3.2.2003.

In the present case, the petitioner himself had submitted application for demarcation through Commission in the Court of Sub-Divisional Magistrate on 22.4.1998. The Assistant Collector Ist Grade, Hamirpur had carried out the demarcation after informing the parties and after visiting the spot. The report had been accepted by the petitioner as recorded by the Assistant Collector Ist Grade, Hamirpur in his order. The statement of the petitioner was also recorded separately as mentioned above by the Assistant Collector Ist Grade, Hamirpur on 21.6.1998. Once the demarcation report has been accepted by the petitioner on the basis of which the order has been passed by the Sub-Divisional Collector on 31.5.2002, he is estopped from challenging the validity of the same. There is no alteration as far as the area on possession of the petitioner is concerned. The mutation was also attested in favour of respondents No.4 and 5 on 9.7.1999.

There is neither any jurisdictional error nor any procedural irregularity in the order passed by the Financial Commissioner, dated 24.7.2006.

Accordingly, the writ petition is dismissed. However, the parties will be bound by the judgment of civil suit No.354/1999 pending before the Senior Sub-Judge, Hamirpur. No order as to costs.

November 12, 2007. **(Rajiv Sharma), Judge.**
(sck)